STATUTES—INTERPRETATION—PRACTICE OF MEDICINE—CHRISTIAN SCIENCE—What is meant by the practice of medicine and surgery within the meaning of state statutes controlling and regulatin the right to engage therein, and whether a Christian Science healer is comprehended, must depend in most instances upon the words of the statute and the nature of the treatment given. Where the statute defines the practice of medicine or surgery to be the "prescribing, directing, or recommending any drug or medicine or other agency for the treatment or relief of regulating the right to engage therein, and whether a Christian Science healer, consisting of prayer for divine assistance and the encouragement and direction of the thoughts of the patient, is not practicing medicine within such statute and does not render the party liable for the penalties prescribed for non-compliance with its provisions. The ordinary meaning of the words, "practice of medicine and surgery," when used alone and not enlarged by additional terms, has been held not to include the practice of Christian Science healing.[1] The statute may, however, enlarge the ordinary and usual meaning of the words to include other persons. Thus, a statute, regulating the practice of medicine which provides that "any person shall be regarded as practicing medicine within the meaning of this act who shall operate on, *profess* to heal, or prescribe for or *otherwise treat,* any physical or mental ailment of another," has several times been held to include Christian Science healers.[2] If the words of the statute are "treatment of whatever nature," it would seem that it is sufficiently broad to include the mental treatment of a Christian Scientist.[3]

In *People* v. *Cole,* which came before the Appellate Division of the Supreme Court of New York a few years ago,[4] a Christian Science healer was convicted of a violation of the statute regulating the practice of medicine.[5] The statute defined one who practices medicine as being "a person who holds himself out as being able to diagnose, treat, operate or precribe for any human disease, pain, injury, deformity or physical condition, and who shall either offer or *undertake, by any means or method,* to diagnose, *treat,* operate or prescribe for any human disease, pain, injury, deformity or physical condition."[6] In a well-considered opinion the court con-

[1] Evans v. State, 6 Ohio N. P. 129 (1898); State v. Mylod, 20 R. I. 632 (1898). In Kansas City v. Baird, 92 Mo. App. 204 (1902), a statute requiring all physicians to report cases of contagious diseases was held not to apply to a Christian Science healer.

[2] State v. Buswell, 40 Neb. 158 (1894); Smith v. People, 51 Col. 270 (1911).

[3] State v. Marble, 72 Ohio St. 21 (1905), in which the court said: "If its followers call it treatment they ought not to be heard to say it is not."

[4] 163 App. Div. 292 (N. Y. 1914).

[5] New York Public Health Law, Sec. 161.

[6] *Ibid.*, Sec. 160, subd. 7.

cluded that, although the defendant denied the material existence of disease and said it was merely mental, yet he undertook to treat the people he called patients for what they told him was the matter with them, and was comprehended by the words of the act. But a further complication arose in that the act specifically provided that it should not be construed to affect the practice of the religious tenets of any church.[7] On this point the court decided that the exercise of the art of healing for a compensation, whether exacted as a fee or expected as a gratuity, could not be classed as an act of worship done in the performance of a religious duty. One has no authority to go into healing commercially for hire, using prayer as the curative agency or treatment, under the cover of religion or a religious exercise. As the court said: "Defendant was engaged in a business venture, not a religious exercise, and religion cannot be used as a shield." Under this construction, the exception of the practice of the religious tenets of any church would only be applied to such doctrines and beliefs as are carried out under the roof of the church itself.[8] The results reached by the court had already been arrived at in a number of earlier cases involving much the same definition of the practice of medicine and containing the same exception of the practice of the religious tenets of any church.[9]

People v. *Cole* was taken on appeal to the Court of Appeals of New York, and the decision that the Christian Science healer was practicing medicine under the statute and was not saved by the exception made of the practice of the religious tenets of any church, was recently reversed by that court.[10] The higher court agreed that the defendant was within the broad wording of the statute which defined the practice of medicine,[11] because he did "treat" the patient by "any means or method." But they were of the opinion, without much argument, that he was specifically protected by the

[7] *Ibid.*, Sec. 173.

[8] But in People v. Spinella, 150 N. Y. App. Div. 923 (1913), the defendant, who held himself out as curing all sorts of diseases through miraculous power, had a church of his own and gave his treatment in front of the altar. Upon appeal counsel squarely raised the point that defendant's acts had been done in the practice of the religious tenets of a church and invoked the exception contained in Section 173 of the Public Health Law, but the conviction was unanimously sustained. A possible explanation might be that the defendant was considered a fraud and his religious belief a mere sham. The case is not reported fully, but the facts are stated in the first opinion of People v. Cole, *supra,* note 4, at p. 310.

[9] State v. Peters, 87 Kan. 265 (1912), a practitioner of Suggestive Therapeutics; Smith v. People, 51 Col. 270 (1911), a healer of the sick and member of the Divine Scientific Healing Mission. The decisions of these cases would apply equally to the case of a Christian Science healer. Also, note 3, *supra.*

[10] 113 N. E. 790 (Oct. 1916).

[11] Sec. 160, subd. 7.

exception made thereto,[12] and that it was for the jury to determine whether or not he was in good faith practicing the tenets of the Christian Science church. The court practically took the view that it was the intention of the legislature to relieve members of the Christian Science and other churches from the provisions of the statute.

The questions presented by the few cases which have arisen on this subject are not without difficulties. Should Christian Science healing be considered to be the practice of medicine and thus be controlled by state statutes regulating such practice? If it should be, then is it not excluded from the state statutes by a provision that the act shall not be construed to affect the practice of the religious tenets of any church? And again, if it should be, then will the state be powerless to punish a father for violation of a statute requiring him to provide medical attention for his sick child, if he has called in a Christian Science healer and the child has died? While if it should not be considered practice of medicine, then are we not neglecting the primary object of state laws regulating medical practitioners, namely, to secure the safety and protect the health of the public by providing competent persons to determine the nature of, and prescribe remedies for, disease?

After having taken the affirmative stand, the first difficulty mentioned above, and the one upon which the New York case was finally decided, presents much to be said on either side. In support of the view that such a provision does exclude a Christian Science healer from amenability to the state medical act, the argument naturally arises that the words of the exception could mean nothing else. The tenets of a church are the beliefs, doctrines, and creeds of that church, of an organized body as distinguished from an individual. It is a tenet of the Christian Science church that prayer to God will result in complete cure of disease, and the practice of such a tenet would be directly saved by the exception. And the fact that the Christian Science church is in terms expressly excepted from the prohibitions contained in the medical practice acts of many of the states might also be used to throw light on the probable like intention of legislatures in framing the exception which we are considering.[13] But on the other hand, the argument which led the New York court to reach an opposite conclusion in the first opinion is very convincing. The court admitted that any person or any church may resort to prayer whenever they wish for the healing of the sick, but contended that a business venture was not a religious exercise. None of the indicia of worship were present in the treatments,

[12] Sec. 173.

[13] These states are Maine, New Hampshire, Massachusetts, Connecticut, North Carolina, North and South Dakota, Kentucky, Tennessee and Wisconsin.

which were not had in a place of religious worship, nor in any building connected therewith, in which case only such acts would have come within the saving clause of the statute.[14] The whole difficulty arises from the fact that healing would seem to be the one prominent and distinctive tenet of the Christian Science Church.[15]

As to the second difficulty, it has been repeatedly held that a person who relies on the efforts of a Christian Science healer to save the life of his sick child can be convicted of involuntary manslaughter for his neglect to provide medical attendance as required by statute.[16] It seems never to have occurred to counsel or judge in any of these cases that by calling in the Christian Science healer the father *had* called a physician and was therefore not guilty of a violation of the statute. It is submitted that such a defense would have been summarily disposed of, had it been attempted, yet the apparently illogical situation exists.

And finally, upon the last question advanced, there may, and does, exist a vigorous difference of opinion. It may well be argued that Christian Science healing is not the practice of medicine. As ordinarily and popularly understood, the practice of medicine has relation to the art of preventing, curing, or alleviating disease or pain, and consists in the discovery of the cause and nature of disease, and the administration of remedies or the prescribing of treatment. Obviously the popular conception of the practice of medicine would require stretching in order to include Christian Science.[17] Moreover, it will be found that the doctrines and beliefs of that church negative the very existence of disease as a physical fact and affirm that what is ordinarily recognized as the presence of disease is simply evidence of a lack of harmonious relation with the

[14] People v. Cole, *supra*, n. 4, at p. 317, the court says: "But where a person opens a business office disconnected from any place of worship, and in surroundings incongrous with any idea of sacrifice and prayer, and for pecuniary consideration furnishes such services as he undertakes to give, then it is no longer a question of one's following the tenets of his religion, but of one's engaging in a purely commercial pursuit, which has brought in to this defendant an income of from $5000 to $6000 a year."

[15] For this reason the Pennsylvania courts have refused to allow Christian Science churches to incorporate. It is held that their purpose is not merely to inculcate a creed or establish a form of worship, but also to treat and cure diseases through healers whom they train and constitute, and it is for that reason contrary to the public policy of the state as expressed in the laws relating to the practice of medicine and surgery, and the safety and protection of the public health. First Church of Christ Scientist Application, 6 Pa. Dist. 745 (1897); First Church of Christ Scientist, 205 Pa. 543 (1903).

[16] Commonwealth v. Brett, 44 Pa. C. C. 56 (1916); Commonwealth v. Hoffman, 29 Pa. C. C. 65 (1903); People v. Pierson, 176 N. Y. 201 (1903); State v. Chenoweth, 163 Ind. 94 (1904); Rex v. Brooks, 9 Brit. Col. 13 (1902); Reg. v. Senior (1899), I Q. B. 283.

[17] State v. Mylod, 20 R. I. 632 (1898).

Almighty. The healer makes no diagnosis and disavows all personal ability or power to influence or affect the condition of the person seeking relief. He emphasizes the fact that God is the only healer and that prayer to God is the only efficacious means of relief. Without going further into the church's doctrines, the difficulty of sustaining the contention that a Christian Science healer is practicing medicine will readily be seen.[18] Yet it will be just as readily seen that to hold otherwise would be directly antagonistic to the spirit and purpose of these state medical acts, the objects of which are to secure the safety and protect the health of the public. The law regards disease as a fact, and these statutes are based upon the assumption that to allow incompetent persons to determine the nature of disease and prescribe remedies would result in injury and loss of life. The subject of such legislation is not really medicine and surgery, but rather the public health, in aid of which the laws make the right to undertake the treatment of disease dependent upon the possession of reasonable qualifications.

The whole question is fraught with the great difficulty that, while Christian Science is a religious belief and is accordingly entitled to the protection given by federal and state constitutions regarding freedom of religious belief, its principal tenet seems to be that of the art of healing, a subject which is embraced within the police power of the states as being closely concerned with the public health. Just how the courts will deal with Christian Science in the future is more or less a matter for speculation, and time alone will clear up the difficulties here adverted to.

P. H. R.

[18] In the first opinion of People v. Cole, *supra*, n. 4, Judge Dowling wrote a strong dissenting opinion based upon the view that the Christian Science healer negatives the very existence of disease as a physical fact.